

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

OTIS MAYS,)
Plaintiff,)
v.) Case No. CIV-24-17-G
UNITED STATES OF AMERICA,)
Defendant.)

REPORT AND RECOMMENDATION

Plaintiff, a prisoner appearing *pro se*, has filed this action alleging various violations of his civil rights. United States District Judge Charles B. Goodwin has referred the matter to the undersigned magistrate judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B).

In accordance with that referral, a review of the initial pleadings filed by Plaintiff was conducted. On April 19, 2024, by Order, the Court found Plaintiff's initiating document to be deficient. The Court ordered Mr. Mays to file an amended complaint, utilizing the Court's approved form. The Court also granted Plaintiff leave to proceed *in forma pauperis* but required an initial partial filing fee of \$14.33. Plaintiff's deadline to comply with the Court's Order was May 6, 2024. Plaintiff was provided the necessary form for compliance. *See* ECF No. 10 and Staff notes dated 04/19/2024. Plaintiff failed to comply.

Plaintiff filed 2 Letters (ECF No. 11 and 12) by which he requested a copy of his complaint and additional time to pay the initial partial filing fee. Plaintiff was granted an extension of 30 days, to and including June 17, 2024 [sic] to pay the \$14.33 initial partial filing fee and to submit his amended complaint. *See* ECF No. 13. When granting this extension, the Plaintiff was also advised that the requested copy of the complaint would require a payment before the Court would provide him an additional copy. *Id.* Plaintiff made the initial partial filing fee and paid the copying fee on June 18, 2024. *See* ECF No. 14. The Court then filed an Order *sua sponte* extending the deadline until July 31, 2024, to file a proper Compliant utilizing the Court's approved form or show good cause why he has failed to comply with this Court's Orders. Plaintiff was warned that absent compliance or a showing of good cause, the undersigned would recommend that this matter be dismissed without prejudice and without further order. *See* ECF No. 16 and Staff notes dated 07/17/2024. Plaintiff has again failed to comply.

A review of the court file indicates that as of this date, the Plaintiff has failed to comply, cure the deficiencies, show good cause for his failure to do so, or request an extension of time to comply with the Court's order. In fact, Plaintiff has not responded to the Court's orders in any way. Further, there is no indication from the docket that Plaintiff did not receive the Court's previous Order which was mailed to Plaintiff's address of record. *See id* and LCvR 5.4.(a).

The undersigned finds that Plaintiff's failure to comply with the Court's Order, in light of the Court's right and responsibility to manage its cases, warrants dismissal

of this action without prejudice. *See Nasious v. Two Unknown B.I.C.E. Agents at Arapahoe County Justice Center*, 492 F.3d 1158, 1161 n.2, 1162 (10th Cir. 2007) (*sua sponte* dismissal for failure to comply with Court's orders permitted under federal rules, and court need not follow any particular procedures in dismissing actions without prejudice for failure to comply).

RECOMMENDATION

Based on the foregoing findings, it is recommended that this action be **DISMISSED without prejudice** for Plaintiff's failure to comply with this Court's orders. Plaintiff is advised of his right to file an objection to this Report and Recommendation with the Clerk of Court by **August 26, 2024** in accordance with 28 U.S.C. § 636 and Fed. R. Civ. P. 72. Plaintiff is further advised that any failure to make timely objection to this Report and Recommendation waives the right to appellate review of the factual and legal issues addressed herein. *Casanova v. Ulibarri*, 595 F.3d 1120, 1123 (10th Cir. 2010).

This Report and Recommendation terminates the referral to the undersigned magistrate judge in the captioned matter.

ENTERED on August 7, 2024.



SHON T. ERWIN
UNITED STATES MAGISTRATE JUDGE